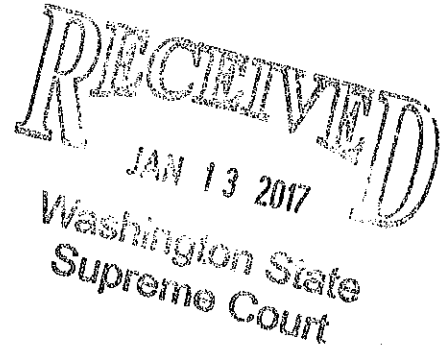


Pacific County
PROSECUTING ATTORNEY

Mark McClain, Prosecutor

January 10, 2017

Honorable Susan L. Carlson
Supreme Court Clerk
P.O. Box 40929
Olympia, WA 98504-0929



RE: Proposed Rule GR 36

Dear Clerk Carlson;

I write in opposition to the American Civil Liberties Union of Washington's (ACLU) proposed rule and would urge the Court to consider as a more comprehensive approach the alternative proposed by the Washington Association of Prosecuting Attorneys (WAPA).

The ACLU's proposed rule urges a standard unsupported by existing law and proposes a rule where a preemptory challenge would be denied upon the vague standard of whether race or ethnicity "could" be a factor. In other words, even if there were ample grounds to remove a juror, if there "could" be an alternative reason for the challenge based on race the trial court is required to deny the preemptory challenge. Any rule that proposes going into the mind of another does not give the trial court the proper tools to address the true goal of the rule.

Moreover, the ACLU rule fails to consider other classes which are protected. As a 16-year trial attorney who has been on both sides of the isle, I have seen many, many more trials where the defense has stricken a juror for nefarious purposes. Striking women in a rape case is a common example, but there are others, and I see nothing in ACLU's proposed rule that would protect these classes and their right to serve as jurors.

Finally, the ACLU's proposed rule does not take into account the need for a timely objection. Certainly these issues should be raised and resolved at the trial court level with the judicial officer observing the conduct as they are in the best position to observe the trial and immediately address the concern raised. Bright-line rules provide tools to the trial courts and the participants and the ACLU's rule falls short. Please reject this proposal and instead adopt the WAPA alternative.

Respectfully,

Mark McClain